HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.28516 of 1996

Date: 29-03-2007.

Between :

A.V.V.Mallikarjuna Rao.

.....Petitioner

And

Government of Andhra Pradesh, rep. by its Secretary, Industries & Commerce Department & another.

.....Respondents.

HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.28516 of 1996

ORDER :

This writ petition is filed seeking a Mandamus declaring proceedings No.A9/3644/94, dated 04.11.1996 issued by the 2nd respondent in pursuance of letter of the 1st respondent as arbitrary, illegal, discriminative, violative of principles of natural justice and violative of Articles 14, 16, 21 and 309 of the Constitution of India and further declare that G.O.Ms.No.199, Industries and Commerce (IFR-II) Department, dated 14th October 1996 issued by 1st respondent has no application to the case of the petitioner herein and direct the respondents to adhere to the judgment of this Court in Writ Petition No.12590 of 1994, dated 16.08.1996 in its true spirit in the interest of justice.

It appears, the petitioner was a Service Engineer Trainee in Hyderabad Allwyn Limited at Hyderabad with effect from 15.03.1990. During his training period, he was

transferred to Bhopal vide proceedings No.PERS/EXES/90, dated 19.05.1990 and further transferred to Calcutta branch by an order dated 21.10.1992. He had completed the training period successfully and he was placed on probation with effect from 15.03.1991 and was allowed to draw consolidated salary of Rs.2,100/- per month. Though he had completed the training successfully, his probation was not declared. He sent a representation to the Manager (Personnel), Allwyn Hyderabad on 17.03.1993 seeking declaration of his probation, regularization of his services and to pay him basic salary as was being paid to others. But nothing had come out. In the meanwhile, the Hyderabad Allwyn Limited was wound up and the petitioner was sent under the control of 2nd respondent as per G.O.Ms.No.180, dated 28.04.1993. Therefore, the salary of the petitioner was being paid as is applicable to the employees of 2nd respondent i.e. consolidated pay of Rs.2,100/- per month though the persons who joined along with the petitioner as Engineer Trainees were drawing higher basic pay and also enjoying other monetary benefits, and due to non-declaration of his probation period for no fault of him, he was drawing less salary than that of those who are on same rank joined subsequent to the petitioner and are doing same work as

that of the petitioner. Therefore, the action of the respondents is illegal, biased and discriminative. The petitioner is entitled for equal pay for equal work. The petitioner reported at 2nd respondent-Corporation on 10.05.1993. Though the respondents have confirmed probation of others, the case of the petitioner was not considered for declaration of probation by the Hyderabad Allwyn Limited for no fault of him. Therefore, he had filed writ petition No.12590 of 1994 and this Court disposed of the same on 16th of August 1996 directing the petitioner to make a fresh representation to the 2nd and 5th respondents therein, within two weeks from the date of the order, requesting them to declare his probation and confirm his services and also to fix his pay. Petitioner made a representation to all the respondents including the 2nd and 5th respondents as per the judgment of the High Court. The 5th respondent i.e. the 2nd respondent herein, in his proceedings dated 04.11.1996, stated that the instructions of the 1st respondent in his letter dated 01.11.1996, conveyed that as per the instructions of the Government in G.O.Ms.No.199, dated 14.10.1996, the pay and scale of the surplus employees who are on consolidated wages, cannot be considered and as such, the petitioner herein is not entitled for the time scale of pay. Hence, the case of the petitioner was rejected by the

2nd respondent as per the letter of the 1st respondent and hence, the petitioner herein is taking separate steps for filing a contempt petition against the 1st and 2nd respondents in due course of time.

According to the petitioner, Clause 10 of G.O.Ms.No.199, dated 14.10.1996 refers that out of the 1486 redeployed surplus employees, about 700 were consolidated wage employees of the erstwhile Hyderabad Allwyn Limited and the others namely 786 were the employees who were of different class who do not fall under the cadre 'wage workers' since the nature of work and qualification and mode of status and cadre is entirely different as that of the 'wage workers'. Therefore, the case of the petitioner herein, who fall under the cadre of 786 employees, will not come under the agreement entered into between the parties under Section 12(3) of the Industrial Disputes Act, 1947 on 13.03.1993. Government of Andhra Pradesh is not a party to the said agreement and the cadre of the petitioner has nothing to do with the said agreement and hence, the same is not binding on him. Therefore, the action of the respondents is highly objectionable, arbitrary and contrary to law, besides contemptuous in nature. Hence, the writ petition.

No counter is filed.

The learned Counsel for petitioner Mr.Raja Ram

strenuously contended that the petitioner was an Engineer Trainee and he was put on a consolidated pay during the training period and his probation was not declared therefore, he was not put on the time scale. In the meanwhile, the Hyderabad Allwyn Limited was wound up and the petitioner was allotted to the A.P.Housing Corporation. The services of some of the juniors to the petitioner, who were allotted to the A.P.Housing Corporation, were regularized and they were put on minimum of the time scale applicable to the post in which they were accommodated, whereas the case of the petitioner was not considered and he is being paid only consolidated salary of Rs.2,100/- which is arbitrary and illegal. G.O.Ms.No.199, dated 14.10.1996 has no application to the case of the petitioner. In fact, this G.O. has been issued for implementation of the scheme of Special Rehabilitation Payment and consequent abolition of supernumerary/temporary posts created for them. After elaborate consideration of various G.Os. and the agreement entered into between the employees and the employer, the Government has taken into account the last pay drawn as on 01.10.1996 by each employee and the payment was ordered with a minimum amount of Rs.30,000/- so as to ensure a reasonable and fair amount as a rehabilitation payment. Ultimately, by a communication dated 04.11.1996, it was held that the

petitioner is not entitled for regular time scale in the A.P.Housing Corporation, but he is entitled only for consolidated wages as fixed by the Hyderabad Allwyn Limited. Therefore, the confirmation of the services of the petitioner and regularization of his pay was considered and rejected. According to the learned counsel for petitioner, this order passed by the respondents is arbitrary and illegal. The petitioner is a qualified Engineer and he was under training for more than one year and thereafter his probation commenced. Before his probation could be declared and put on the scale, the Hyderabad Allwyn Limited was wound up and he was accommodated at A.P.Housing Corporation, but having absorbed in the A.P.Housing Corporation, he is entitled for minimum scale of pay and he cannot be put on consolidated pay for an indefinite time.

The learned counsel for respondents has strenuously contended that the petitioner has no right whatsoever for seeking regularization of services and for seeking to put him on regular time scale. The petitioner was accommodated on humanitarian grounds at A.P.Housing Corporation and further he cannot seek time scale on par with others in the organization, particularly, in view of G.O.Ms.No.199, dated 14.10.1996.

I have given my earnest consideration to the respective submissions of the learned counsel on either side and perused the impugned order and other material made available on record.

At the outset, I am of the opinion that petitioner is being continued as on today as an Assistant Manager-Engineering in the A.P.Housing Corporation, therefore, merely because the petitioner was not put on probation and he has not completed the probation before he was allotted and accommodated in the A.P.Housing Corporation, it cannot be said that he is not entitled for salary on par with other employees who are absorbed into A.P.Housing Corporation. The Doctrine of equal pay to equal work is applicable in case of the petitioner also. Therefore, he is entitled for the minimum of the time scale attached to the post of Assistant Manager- Engineering in the 2nd respondent-Corporation on par with others.

The writ petition is lying before this Court for the last ten years and there are no interim orders passed. Under these circumstances, the impugned order dated 04.11.1996 is set aside and the respondents are directed to consider putting the petitioner on the regular time scale with all consequential benefits from the date of his joining services of the A.P.Housing Corporation or the date on

which he would have completed probation as an Assistant Engineer had he been in the Hyderabad Allwyn Limited. However, the petitioner is not entitled for any arrears of such salary.

Writ petition is accordingly allowed. No order as to costs.

_____

C.V.RAMULU, J

29th March 2007

ajr